

PART 12—RECORDKEEPING AND CONFIRMATION REQUIREMENTS FOR SECURITIES TRANSACTIONS

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AUTHORITY: 12 U.S.C. 24, 92a, and 93a.

SOURCE: 61 FR 63965, Dec. 2, 1996, unless otherwise noted.

§ 12.1 Authority, purpose, and scope.

(a) *Authority*. This part is issued pursuant to 12 U.S.C. 24, 92a, and 93a.

(b) *Purpose*. This part establishes rules, policies, and procedures applicable to recordkeeping and confirmation requirements for certain securities transactions effected by national banks for customers.

(c) *Scope*—(1) *General*. Any security transaction effected for a customer by a national bank is subject to this part, except as provided by paragraph (c)(2) of this section. This part applies to a national bank effecting transactions in government securities. This part also applies to municipal securities transactions by a national bank that is not registered as a “municipal securities dealer” with the Securities and Exchange Commission. See 15 U.S.C. 78c(a)(30) and 78o-4. This part, as well as 12 CFR part 9, applies to securities transactions effected by a national bank as fiduciary.

(2) *Exceptions*—(i) *Small number of transactions*. The requirements of §§ 12.3(a)(2) through (4) and 12.7(a)(1) through (3) do not apply to a national bank having an average of fewer than 200 securities transactions per year for customers over the prior three calendar year period. The calculation of

this average does not include transactions in government securities.

(ii) *Government securities*. The recordkeeping requirements of § 12.3 do not apply to national banks effecting fewer than 500 government securities brokerage transactions per year. This exception does not apply to government securities dealer transactions by national banks. See 17 CFR 404.4(a).

(iii) *Municipal securities*. This part does not apply to transactions in municipal securities conducted by a national bank registered with the Securities and Exchange Commission as a “municipal securities dealer” as defined in title 15 U.S.C. 78c(a)(30). See 15 U.S.C. 78o-4.

(iv) *Foreign branches*. This part does not apply to securities transactions conducted by a foreign branch of a national bank.

(v) *Transactions effected by registered broker/dealers*. This part does not apply to securities transactions effected by a broker or dealer registered with the Securities and Exchange Commission (SEC) where the SEC-registered broker or dealer directly provides the customer a confirmation; including, transactions effected by a national bank employee when acting as an employee of an SEC-registered broker/dealer.

(3) *Safe and sound operations*. Notwithstanding paragraph (c)(2) of this section, every national bank conducting securities transactions for customers shall maintain effective systems of records and controls regarding their customer securities transactions to ensure safe and sound operations. The systems maintained must clearly and accurately reflect appropriate information and provide an adequate basis for an audit.

§ 12.2 Definitions.

(a) *Asset-backed security* means a security that is primarily serviced by the cashflows of a discrete pool of receivables or other financial assets, either fixed or revolving, that by their terms convert into cash within a finite time period plus any rights or other assets designed to assure the servicing or timely distribution of proceeds to the security holders.